



Questions and Answers: Draft Economic Analysis and Draft Environmental Assessment for the Zuni Bluehead Sucker

Southwest Region (Arizona • New Mexico • Oklahoma • Texas) www.fws.gov/southwest/

For Release: April 14, 2015

Contacts: Wally “J” Murphy, (505) 761-4781, Wally_Murphy@fws.gov
Vanessa Burge, (505) 248-6420, Vanessa_Burge@fws.gov

Q: What action is the U.S. Fish and Wildlife Service (Service) taking?

A: The Service is announcing the Notice of Availability of the draft economic analysis and the draft environmental assessment for the proposed critical habitat for the Zuni bluehead sucker. The draft economic analysis provides estimated costs of the foreseeable potential economic impacts resulting from the proposed critical habitat designation for the species. The Service also announces a revision of the proposed critical habitat designation and the reopening of the comment period on the proposed critical habitat for the Zuni bluehead sucker for 30 days. The comment period will close on May 14, 2015.

Q: What information is the Service requesting?

A: Any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. With respect to the critical habitat proposal for the Zuni bluehead sucker, we are particularly interested in comments concerning:

- (1) The reasons why we should or should not designate habitat as “critical habitat” under section 4 of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.
- (2) Specific information on:
 - (a) The amount and distribution of the Zuni bluehead sucker habitat;
 - (b) What areas occupied by the species at the time of listing (or are currently occupied) that contain features essential for the conservation of the species we should include in the critical habitat designation and why;
 - (c) Special management considerations or protection that may be needed in critical habitat areas

- (d) What areas not occupied at the time of listing are essential to the conservation of the species and why.
- (3) Land use designations and current or planned activities in the subject areas and their probable impacts on proposed critical habitat.
- (4) Information on the projected and reasonably likely impacts of climate change on the Zuni bluehead sucker and proposed critical habitat.
- (5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, the benefits of including or excluding areas that exhibit these impacts.
- (6) Information on the extent to which the description of economic impacts in the DEA is a reasonable estimate of the likely economic impacts.
- (7) Whether any areas we are proposing for critical habitat designation, and specifically proposed critical habitat on Tribal lands owned by the Navajo Nation and Zuni Pueblo, should be considered for exclusion under section 4(b)(2) of the Act.
- (8) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.
- (9) Information about the habitat condition within the proposed critical habitat designation for the Zuni bluehead sucker, especially the quality and quantities of the primary constituent elements, particularly within the Rio Nutria above the Tampico Draw confluence, Rio Pescado, and Cebolla Creek.

Comments or information submitted on the proposed rule during the initial comment period from January 25, 2013, to March 26, 2013, do not need to be resubmitted. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final designation. Our final designation will take into consideration all written comments and any additional information we receive during both comment periods.

Q: How can the public submit information on the proposal?

A: The Service is requesting comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

Written comments and information concerning this finding can be submitted by one of the following methods:

- (1) **Electronically:** Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Submit comments on the critical habitat proposal and associated draft economic analysis by searching for FWS–R2–ES–2013–0002, which is the docket number for the critical habitat rulemaking.
- (2) **By hard copy:** Submit comments on the critical habitat proposal and associated draft economic analysis by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2013–0002; Division of Policy, Performance, and Directives Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike MS: BPHC, Falls Church, VA 22041-3803.

Comments must be received within 30 days, on or before May 14, 2015. The Service will post all comments on <http://www.regulations.gov>. This generally means the agency will post any personal information provided through the process. The Service is not able to accept email or faxes.

For further information contact Wally “J” Murphy, Field Supervisor, Albuquerque, New Mexico, Ecological Services Field Office, 2105 Osuna NE, Albuquerque, New Mexico, 87113, by telephone (505-346-2525), or by fax (505-346-2542). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

Q: What is critical habitat?

A: Critical habitat is a term in the ESA that identifies geographic areas occupied at the time a species is listed that contain the physical or biological features essential for the conservation of a threatened or endangered species. It is further defined as, areas outside the geographic area occupied by the species at the time of listing that are essential for the conservation of the species. The ESA defines “conservation” as the actions leading towards the eventual recovery of a species to the point where it is no longer threatened or endangered.

Critical habitat provides protection from the prohibition against destruction or adverse modification from actions carried out, funded, or authorized by a federal agency and is carried out through required consultation under section 7 of the ESA. Due to legal challenges, the Service no longer relies on the regulatory definition of “destruction or adverse modification” of critical habitat. Instead, the Service relies on the statutory provisions of the ESA to complete adverse modification analysis.

The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. A critical habitat designation identifies areas that are important to the conservation of federally listed threatened or endangered species. A critical habitat designation requires federal agencies to consult with the Service on any of their actions that may affect designated critical habitat. The Service can then recommend ways to minimize any adverse effects. It imposes no requirements on State or private actions on State or private lands where no federal funding, permits or approvals are required.

Critical habitat designation has several benefits including: (1) Triggering consultation under section 7 of the Act in new areas for actions in which there may be a federal nexus where it would not

otherwise occur because, for example, it has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

Q: What is the purpose of designating critical habitat?

A: A critical habitat designation generally has no effect on situations that do not involve a federal agency — for example, a private landowner undertaking a project that involves no federal funding or permit. Federal agencies are required to consult with the Service on actions they carry out, fund, or authorize to ensure that their actions will not destroy or adversely modify critical habitat. In this way, a critical habitat designation protects areas that are necessary for the conservation of the species.

Q: What is an economic analysis?

A: Under the ESA, the Service is required to take into consideration the economic impact, and any other relevant impact, of designating particular areas as critical habitat. An economic analysis provides estimated costs of the foreseeable economic impacts of a critical habitat designation.

Q: What are the potential economic impacts of designating critical habitat for the Zuni bluehead sucker?

A: The draft economic analysis provides estimated costs of the foreseeable potential economic impacts resulting from the proposed critical habitat designation for the Zuni bluehead sucker. The draft economic analysis quantifies the probable incremental economic impacts of critical habitat designation to be limited to the additional administrative efforts and the minor costs of conservation efforts resulting from a small number of future section 7 consultations. The total present value impacts anticipated from the designation of critical habitat for the Zuni bluehead sucker is likely to be less than \$10,000 per consultation.

Q: Do listed species in critical habitat areas receive more protection?

A: Listed species and their habitat are protected by the ESA whether or not they are in an area designated as critical habitat. To understand the additional protection that critical habitat provides to an area, it is first necessary to understand the protection afforded to any endangered or threatened species, even if critical habitat is not designated for it.

The ESA forbids anyone to import, export, or engage in interstate or foreign sale of endangered and threatened animals and plants without a special permit. It also makes “take” illegal forbidding the killing, harming, harassing, pursuing or removing the species from the wild. The ESA requires that federal agencies conduct their activities in such a way as to conserve species. The ESA also requires federal agencies to consult with the Service to conserve listed species on their lands and ensure that any activity they fund, authorize or carry out will not jeopardize the survival of a threatened or endangered species. This is known as consultation.

In consultations for species with critical habitat, federal agencies are required to ensure that their activities do not destroy or adversely modify critical habitat to the point that it can no longer serve its conservation role in the species' recovery. The greatest benefit of critical habitat occurs in areas that are currently unoccupied by the species, but are needed for its recovery. With critical habitat designations, these unoccupied areas are protected by the prohibition against destruction and adverse modification of critical habitat.

Q: How would a critical habitat designation affect my private land?

A: Requirements for consultation on critical habitat do not apply to entirely private actions on private lands. Critical habitat designations only apply to federal lands or federally funded or permitted activities on private lands. Activities on private or state lands that are funded, permitted or carried out by a federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, or a section 402 permit under the Clean Water Act from the Environmental Protection Agency, will be subject to the section 7 consultation process with the Service if those actions may affect critical habitat or a listed species. The federal action agencies are responsible for consulting with the Service.

Through this consultation, the Service would advise agencies whether the permitted actions would likely jeopardize the continued existence of the species or adversely modify critical habitat. Federal actions not affecting critical habitat or otherwise affecting species or their habitat (e.g., suitable habitat outside of critical habitat), and actions on non-federal lands that are not federally funded, permitted or carried out, will not require section 7 consultation.

Q: What modifications to the critical habitat are being made at this time?

A: On January 25, 2013, the Service concurrently published a proposed rule to list the Zuni bluehead sucker as endangered and to designate approximately 291 miles in three units in McKinley, Cibola, and San Juan Counties, New Mexico, and Apache County, Arizona as critical habitat. On July 24, 2014, we published a final listing determination for the Zuni bluehead sucker. Based on new genetic information, that final listing rule revised the range of the species from the time of the proposal such the San Juan River Unit populations were no longer included as part of the listed species. As a result, the areas have also been removed from the proposed critical habitat designation, reducing the total amount of proposed critical habitat for the Zuni bluehead sucker from approximately 291 miles to 141 miles.

Q: When an area is designated as critical habitat, are all human activities in the area prohibited?

A: No. The only activities prohibited in these areas are federal actions that are likely to result in destruction or adverse modification of the critical habitat for the Zuni bluehead sucker. The consultation process supports the recovery of species and their ecosystems. Consultations provide ways to implement recovery tasks by addressing threats to listed species that may result from federal agency programs and activities through a collaborative process. For more information go to: <http://www.fws.gov/endangered/esa-library/pdf/consultations.pdf>.